

### REMARKS

Claims 1-42 are pending in the above-identified application. The specification has been amended to correct clerical errors and/or informalities. No new matter has been added.

#### Objections to the Specification

The specification has been objected to on grounds that it contains an embedded hyperlink. The specification has been amended to delete the embedded hyperlink. Hence, applicants respectfully submit that the specification, as amended, overcomes the objection.

#### Claim Rejections

Claims 1-5, 7-13, 15-16, 25-26, and 30 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0156860 to Finke et al. Claims 6, 14, and 27 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of U.S. Publication No. 2002/0035403 to Clark et al. Claims 17-21, 23-24, 37-38, and 40-42 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of logical reasoning. Claims 22 and 39 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of logical reasoning and further in view of Clark. Claims 28-29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of U.S. Patent No. 6,405,261 to Gaucher.

Applicants respectfully submit that Finke does not appear to be prior art to the present application as Finke was filed on June 5, 2002, which is after the filing date of the present application. In addition, the Examiner has not established that Finke is entitled to an earlier filing date. MPEP § 2136.03 states:

In order to carry back the 35 U.S.C. § 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the parent application must (A) have a right of priority to the earlier date under 35 U.S.C. § 120 and (B) support the invention claimed as required by 35 U.S.C. 112, first paragraph. "For if a patent could not theoretically have issued the day the application was filed, it is not entitled to be used against another as 'secret prior art.'" under 35 U.S.C. 102(e). *In re Wertheim*, 646 F.2d 527, 537, 209 USPQ 554, 564 (CCPA 1981).

Finke claims that it is a continuation-in-part of U.S. Application Serial No. 10/077,105, filed on February 15, 2002, by Buchbinder et al. The filing date of Buchbinder, however, is also after the filing date of the present application. Buchbinder, in turn, claims that it is a continuation-in-part of U.S. Application Serial No. 09/513,550, filed on February 25, 2000, now abandoned. No proof, however, has

been given to show that U.S. Application Serial No. 09/513,550 supports the invention claimed in Finke as required by 35 U.S.C. § 112, first paragraph.

Accordingly, applicants respectfully submit that rejection of claims 1-5, 7-13, 15-16, 25-26, and 30 under 35 U.S.C. § 102(e) as being anticipated by Finke, claims 6, 14, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of Clark, claims 17-21, 23-24, 37-38, and 40-42 under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of logical reasoning, claims 22 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of logical reasoning and further in view of Clark, and claims 28-29 under 35 U.S.C. § 103(a) as being unpatentable over Finke in view of Gaucher, is improper as the Examiner has not established Finke to be a prior art reference to the present application.

Claims 31-32 and 34-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,650,940 to Tonozyuka et al. in view of Gaucher. Claim 31 recites:

An apparatus for monitoring and/or controlling a home device, the apparatus comprising:  
a microprocessor;  
a memory connected to the microprocessor; and  
one or more computer programs executable by the microprocessor, wherein the computer programs comprise computer instructions for:  
establishing a connection with a web-based host; and  
receiving monitoring and/or control information from the web-based host.

The Office action states:

As per claim 31 wherein an apparatus for monitoring and/or controlling a home device, the apparatus comprising a microprocessor [data processing unit 172]; a memory [memory unit 176] connected to the microprocessor [data processing unit 172]; and one or more computer programs [various data and programs] executable by the microprocessor [data processing unit 172], wherein the computer programs [various data and programs] comprise computer instructions [data transmission unit 171] for establishing a connection with a web-based host [central monitoring device 120]; and receiving monitoring and/or control information from the web-based host [central monitoring device 120]; the Tonozyuka et al. reference discloses the supervising personnel, located at a remote location, makes an access to the central monitoring device 120 by connecting the portable monitoring device 170 to the data transmission line 160 through the MODEM device 150 (see figures 2, 3 and column 5 lines 33-42). In response to the access made by the portable monitoring device 170, the data transmission unit 123 admits the access to the central monitoring device 120 and the temporarily stored information concerning the occurrence of the abnormality is transmitted to the portable monitoring device 170 through the MODEM devices 140 and 150 and the data transmission line 160 (see column 5 lines 43-49).

(April 14, 2003 Office action, pgs. 15-16).

Tonozuka discloses:

The supervising personnel who is not present in the central monitoring room and who is located at a remote location from the central monitoring room such as his own home or outdoor field work site is carrying the portable monitoring device 170 and makes an access to the central monitoring device 120 by connecting the portable monitoring device 170 to the data transmission line 160 through the MODEM device 150, just as in a case of an ordinary computer communication, at predetermined timings or any desired timings.

In response to the access made by the portable monitoring device 170, the data transmission unit 123 admits the access to the central monitoring device 120 and the temporarily stored information concerning the occurrence of the abnormality is transmitted to the portable monitoring device 170 through the MODEM devices 140 and 150 and the data transmission line 160.

(Col. 5, ll. 33-49).

The Office action contends that portable monitoring device 170 is the apparatus and central monitoring device 120 is the web-based host. Tonozuka, however, discloses that central monitoring device 120 is the device that “monitors” process 110 and that central monitoring device 120 sends the collected monitoring data to portable monitoring device 170 only when it receives requests from portable monitoring device 170 for the collected data. *See* col. 5, ll. 9-32. Therefore, portable monitoring device 170 in Tonozuka cannot be the apparatus in claim 31.

Central monitoring device 120 in Tonozuka, however, cannot be both the apparatus and the web-based host since claim 31 makes it clear that the apparatus is separate from the web-based host. Accordingly, Tonozuka fails to disclose or suggest the elements of claim 31.

Gaucher does not cure the deficiencies of Tonozuka as Gaucher merely discloses “an automatic multi-rate wireless/wired computer network using a combination of wireless communications and an AC power network.” (Col. 1, ll. 15-17). The Office action has not identified any passage of Gaucher as disclosing or suggesting the elements of claim 31. Thus, even if Tonozuka and Gaucher were combined, the combination neither teaches nor suggests the elements of claim 31.

Accordingly, applicants respectfully submit that claim 31 is patentable over Tonozuka in view of Gaucher based at least on the above reasons. Given that claims 32-36 depend from claim 31, it is respectfully submitted that those claims are patentable over Tonozuka in view of Gaucher for at least the same reasons.

CONCLUSION

On the basis of the above remarks, reconsideration and allowance of the claims is believed to be warranted and such action is respectfully requested. If the Examiner has any questions or comments, the Examiner is respectfully requested to contact the undersigned at the number listed below.

Respectfully submitted,

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Dated: 8-14-03

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